

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Verizon Communication Inc. (“Verizon”) and MCI, Inc. (“MCI”) to Transfer Control of MCI’s California Utility Subsidiaries to Verizon, which Will Occur Indirectly as a Result of Verizon’s Acquisition of MCI.

Application 05-04-020  
(Filed April 21, 2005)

**ASSIGNED COMMISSIONER’S RULING DENYING  
MOTION REQUESTING FURTHER MODIFICATIONS TO  
PROCEDURAL SCHEDULE**

The Utility Reform Network (TURN), the Office of Ratepayer Advocates (ORA) and the Latino Issues Forum (LIF) (collectively, “Protestants”) have filed a Motion<sup>1</sup> that seeks further modifications<sup>2</sup> to the procedural schedule adopted in this proceeding. The Motion explains that the Protestants desire additional time to prepare motions for hearings, opening briefs, and reply briefs.<sup>3</sup>

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<sup>1</sup> *Motion for Modification of Procedural Schedule*, filed September 8, 2005 (Motion)

<sup>2</sup> On July 26, 2005, we issued an *Assigned Commissioner’s Ruling Extending Time for Service of Intervenor Testimony* (ACR). Of the three parties to this motion, two – TURN and ORA – were among the group of intervenors filing a motion for additional time filed on July 13, 2005. This ruling modified a schedule adopted in *Scoping Memo and Ruling of Assigned Commissioner*, June 30, 2005.

<sup>3</sup> Motion, page 1.

On September 8, 2005, the Commission received three responses to the Motion.<sup>4</sup> The response of Cox and the response of Qwest support the Motion. The response of the Applicants opposes the Motion.

Since the Motion fails to demonstrate why further modifications to the schedule are in the public interest, we deny the Motion. Today's Assigned Commissioner's Ruling details the specific considerations that lead to our denial.

### **Motion of Protestants**

The Motion seeks to secure additional time for the preparation of motions for hearings (an additional two weeks). In the event hearings will be held, the Motion seeks an additional half week to prepare for hearings, an additional one and a half weeks for opening briefs, and a modest extension in time for reply briefs. In the event no hearings are held, the Motion requests an additional two weeks for the preparation of briefs and an additional half week for reply briefs in the event that no hearings are held.<sup>5</sup> A summary table contained in the Motion shows that if hearings are held, the first opportunity for the Commission to decide this matter would move from December 1 to December 29, 2005.<sup>6</sup> If no hearings are held, the first opportunity for the Commission to decide this matter would move from November 18, 2005 to December 15, 2005.

The Protestants assert a series of arguments in the Motion in support of their request. First, the Protestants raise the specter of "reversible error." In

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<sup>4</sup> *Response of Cox California Telecom, L.L.C., dba Cox Communications (Cox), to Motion for Modification of Procedural Schedule*, September 8, 2005; *Response of Qwest Communications Corporation (Qwest) to Motion for Modification of Procedural Schedule*, September 8, 2005; and *Applicants' (Verizon Communications, Inc. and MCI, Inc.) Opposition to Intervenor's Motion for Modification of Procedural Schedule*, September 8, 2005.

<sup>5</sup> Motion, pages 3-4.

<sup>6</sup> Currently no meeting of the Commission is scheduled for December 29, 2005.

particular, the Protestants claim that “the parties harmed by the existing schedule are those who, comparatively, have the least amount of resources at their disposal, such as TURN, ORA, LIF, the Greenlining Institute, Disability Advocates, small competitive local exchange companies (CLECs), etc.”<sup>7</sup>

Protestants further argue that since this proceeding is running concurrently with the SBC-AT&T merger proceeding, intervenors face participation burdens not shared by the Applicants.

Second, Protestants argue that significant review of the testimony will be needed to reach a meaningful evaluation on the need for hearings. As a result, Protestants conclude that the deadline for motions on the need for hearings is too close to the deadline for the submission of rebuttal testimony.

Third, Protestants argue that the timing of briefs should be consistent with the time allotted in other Commission proceedings, and that the ACR failed to justify the revised schedule that it adopted. They recommend a comparison of the currently adopted schedule with the schedule in the SBC/AT&T proceeding. Further, Protestants argue that more time is needed to prepare for hearings and more time is needed to prepare briefs.

Fourth, Protestants argue that concurrent proceedings place demands on resources and that if all go forward at the same time “is a recipe for the CPUC to fail at effectively discharging its duty to the ratepayers and for parties to effectively participate in each of these proceedings.”<sup>8</sup>

Fifth, Protestants argue that Applicants will not be harmed by a modified schedule.

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<sup>7</sup> Motion, pp 4-5.

<sup>8</sup> Motion, p. 13.

### **Responses of Cox and Qwest**

Cox's response notes that it agrees with the Protestants that the schedule "adopted in this proceeding is extraordinarily condensed without a sufficient legal basis or other justification."<sup>9</sup> They note that "it does not appear reasonable or necessary to require intervening parties to review and analyze Joint Applicants' rebuttal testimony in one day and submit a motion requesting a hearing on the next day."<sup>10</sup> They further state that "In fact, intervenors have already identified a significant number of material issues in dispute which must be resolved through hearings."<sup>11</sup>

Similarly, Qwest argues that the current procedural schedule is "wholly unrealistic, woefully inadequate, and should be modified forthwith to afford all parties and this Commission sufficient time to engage in a meaningful assessment of the case."<sup>12</sup> Qwest voices support for the arguments made by Protestants.

### **Opposition of Applicants to Motion**

The Applicants characterize the Motion as a "belated attempt to delay this proceeding." They note that the current schedule was adopted in response to intervenors' request for more time to prepare their testimony and argue that the moving parties should not be allowed to "leverage that prior benefit into further delay."<sup>13</sup>

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<sup>9</sup> Cox, p. 1

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Qwest, pp. 1-2.

<sup>13</sup> Applicants, p. 1.

The Applicants argue that the current schedule is adequate. Specifically, they note that the motions on the need for hearings “should not be complex” and parties should be able to complete them. Moreover, the Applicants note the obvious similarities in the evidence and arguments presented in this proceeding with the evidence and arguments presented in the SBC/AT&T proceeding.

The Applicants argue that the current schedule is consistent with precedent. They argue that the best precedent is not the schedule adopted in the SBC/Pacific Telesis and GTE/Bell Atlantic proceedings, but the schedules adopted in which the Commission approved transfers of control of companies like MCI. Applicants cite a series of proceedings in which the Commission approved these applications without hearings. Applicants further argue that if the Commission further delays this proceeding, the Commission will demonstrate that it has “earned the reputation of being the last regulatory authority in the nation to approve transactions involving ILECs.”<sup>14</sup> They also argue that the schedule set by Washington State, which is cited by the moving parties, results from factual circumstances that do not apply here.

### **Discussion**

There is no basis for revising our schedule again.

The Protestants’ argument that the current schedule harms them because they lack resources is unpersuasive. Two of the three Protestants participate in the Commission’s generous intervenor compensation program, which provides them with the ability and incentive to make substantive contributions to our regulatory process. Moreover, the Commission’s record in providing resources to intervenors is excellent. We note that the Commission’s Intervenor

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<sup>14</sup> Applicants, pp. 7-8

Compensation Decisions from 2002 (published March 10, 2004), page 2, lists awards of approximately \$3.1 million in 2002. More recently, the CPUC has approved hourly compensation rates as high as \$490. Thus, the intervenor Protestants have the opportunity to obtain generous compensation by making substantial contributions to this proceeding.

The third Protestant, ORA, has the resources of the State of California at its disposal, and its current budget is in excess of \$20 million. With a budget of this scale and with vast institutional experience in similar merger proceedings, ORA's management clearly has the ability to devote adequate resources to this proceeding and to ensure a substantive filing.

The argument of Protestants that there is insufficient time to prepare motions, to prepare for hearings, and to prepare briefs is unpersuasive.

In particular, two of the three Protestants have already filed one motion saying that there is a need for hearings. Moreover, Protestants have had both the opening and reply testimony for some time. In addition, Protestants have recently completed hearings on similar arguments and evidentiary showings that were made in the SBC/AT&T proceeding. As a result, they should be able to draw on that proceeding in preparing their motions. Indeed, Cox, even while supporting the Motion, says that it has already identified issues that it believes warrant hearings. It is difficult to understand why Protestants cannot do so as well while observing the current schedule.

Similarly, the argument that more time is needed for briefs has little merit. As the Applicants point out, all the intervenors in this proceeding are making filings that are extremely similar to those filed in the SBC-ATT proceeding. The briefs that parties will file in the SBC-ATT proceeding will provide a template for the briefs in this proceeding.

Furthermore, the more general argument that the concurrent proceedings place demands on resources and that if all go forward at the same time “is a recipe for the CPUC to fail at effectively discharging its duty to the ratepayers and for parties to effectively participate in each of these proceedings” is undercut by the very testimony of Protestants’ witnesses.

For example, TURN’s witness notes at the start of testimony that the ... areas of responsibility are comparable to the topics covered in the separate reply testimonies that Ms. Murray and Ms. Kientzle filed on behalf of TURN in A.05-02-027, the parallel merger proceeding involving SBC Communications Inc. (“SBC”) and AT&T Corp. (“AT&T”).<sup>15</sup>

TURN’s witness further notes that :

... SBC Communications Inc. (“SBC”) and AT&T Corp. (“AT&T”) filed an Application for permission to complete a merger that is remarkably similar to the one proposed by the Applicants in this proceeding.<sup>16</sup>

Thus, there are clearly similarities that permit effective participation in the current proceeding.

Perhaps the most dramatic evidence undercutting the argument of Protestants that they cannot participate in this proceeding and that the Commission cannot develop a substantial record in this proceeding is the scope and scale of the Protestants’ own testimony. Even with what TURN and ORA characterize as a truncated schedule, they have already each filed several hundred pages of testimony that together dwarf that of any other party , including the Applicants. This extensive testimony belies their arguments that

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<sup>15</sup> Exhibit TURN 1, p. 4.

<sup>16</sup> Exhibit TURN 1, p. 44.

resource and schedule constraints prevent their participation, or that we cannot develop an extensive record.

The schedule adopted in this proceeding is consistent with Commission precedent. In particular, we note that AT&T's spin-off of its cable operations to Comcast took 6 months from filing to decision.<sup>17</sup> The MCI-Worldcom merger took 9 months from filing to decision.<sup>18</sup> The proposed MCI-BT merger took 6 months from filing to decision.<sup>19</sup> The schedule proposed is consistent with these precedents, and consistent with the timelines adopted by the FCC and other states.

Finally, the Protestants' argument that Applicants will not be harmed by a delay to be irrelevant. The Commission is charged with promoting the interests of all Californians, not just those who are parties in this proceeding. If the transaction is beneficial to Californians, there is no reason to delay it beyond the time needed to make such a determination. Delay simply denies benefits to Californians. Similarly, if the transaction harms Californians, there is no reason to delay rejecting it.

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<sup>17</sup> *Comcast/AT&T*, D.02-11-025, 2002 Cal. PUC LEXIS 731 (6 months from filing to decision).

<sup>18</sup> *MCI/WorldCom*, D.98-08-068, 1998 Cal. PUC LEXIS 912 (9 months from filing to Decision).

<sup>19</sup> *MCI/BT*, D. 97-07-060, 1997 Cal. PUC LEXIS 557 (6 months from filing to decision).

**IT IS RULED** that:

1. The Motion for Modification of Procedural schedule is denied.

Dated September 12, 2005 in San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy  
Assigned Commissioner

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the Assigned Commissioner's Ruling Extending Time for Service of Intervenor Testimony by using the following service:

☒ E-Mail Service: sending the entire document as an attachment to all known parties of record that have provided electronic mail addresses.

☒ U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Dated September 12, 2005 at San Francisco, California.

/s/ VANA F. WHITE

Vana F. White

### **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.